IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1835 OF 2007
IN
CRIMINAL APPEAL NO..... OF 2007

Ramakant Ramchandra Dalvi ...Applicant
V/s.
Rashmi Raju Mhatre & Anr. ...Respondents

Mr.Sandesh D. Patil, Advocate, for the Applicant.

Mr.D.S. Manerkar, Advocate, for Respondent No.1.

Mr.A.S. Shitole, APP, for the State.

CORAM : A.P. DESHPANDE, J.

DATED : 21ST NOVEMBER, 2007.

P.C.:

1. By the present application, the applicant/original complainant is seeking special leave to file an Appeal against a judgment and order of acquittal passed by the Magistrate dismissing a complaint filed by the applicant under Section 138 of the Negotiable Instruments Act.

2. The complainant averred in the complaint that he had advanced a hand loan in the sum of Rs.6,00,000/- to the accused and the accused issued the cheque of Rs.5,00,000/- which when presented for encashment was dishonoured. The complaint is silent

about the time as to when the amount of Rs.6,00,000/- is said to have been advanced. Perusal of the evidence reveals that some time in July, 2004 the amount is claimed to have been advanced by the complainant. Even in the evidence of the complainant, there is no whisper of the time when the amount was paid and the manner in which it was paid.

3. During the examination, the complainant had deposed that he had withdrawn the amount from the Bank for its payment to the accused but no Bank account or relevant evidence from the Bank of the complainant was placed on record of the Trial Court. The case of the accused has been that one Mrs.Sawant who is relation of the accused has taken loan from the complainant and with a view to secure the loan, the complainant insisted for the accused to handover a cheque of Rs.5,00,000/- and thus the cheque was issued by way of security for repayment of the loan by Mrs.Sawant. In this fact situation, the Trial Court has held that the complainant has utterly failed to prove the commission of offence by the accused.

4. During the examination, the complainant also admitted that some writing/agreement was entered into when the amount of Rs.6,00,000/- was advanced to the

accused but the said writing/agreement was not placed on record by the complainant in the case before the Trial Court.

5. Taking overall view of the matter, the Trial Court has held that the presumption under Section 139 stands rebutted. A further finding is recorded that there was no debt or other liability legally enforceable for satisfaction of which the cheque could be said to have been handed over by the accused to the complainant.

6. Perused the judgment and order passed by the Trial Court. It goes to take a very possible view of the matter which does not call for any interference at the hands of this Court. Hence, prayer for grant of special leave to file an Appeal against judgment and order of acquittal is rejected.

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